

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

NOLAN ORENTAL STARNES	§	
VS.	§	CIVIL ACTION NO. 1:05-CV-375
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING MOVANT'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant Nolan Orenthal Starnes, a federal prisoner, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The Court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends that the motion to vacate, set aside or correct sentence be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Movant filed objections to the magistrate judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court agrees with the magistrate judge's determination that Mr. Mike Laird's testimony was more credible than the testimony of the movant. Movant did not reasonably demonstrate to counsel that he was interested in appealing, and there was no reason for counsel to believe that a rational defendant would want to

appeal this case. *See Roe v. Flores-Ortega*, 528 U.S. 470, 477-80 (2000). Therefore, the Court concludes the objections are without merit.

ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So **ORDERED** and **SIGNED** this **10** day of **September, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge